

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.06.2018
Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.304 of 2008

M/s. Micson Finance,
Rep. by its Partner M.Paul Stephen,
No.28/1, Andiappa Gramini Street,
Royapuram, Chennai - 600 013. Appellant/Complainant

Vs.

1.V.Sampath Sekar,
S/o.Late Varadharajan.

2.S.Alamelu,
Director,
M/s.M.V.R.Shipping Services (P) Ltd.,
No.50, Aratheon Road,
Royapuram, Chennai - 600 013. ... Respondents/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to call for the records relating to C.C.No.2001 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Ambattur and set aside the order of acquittal dated 19.03.2008 and consequently, allow the appeal.

For Petitioner : No appearance

For Respondents: Not Ready in Notice

J U D G M E N T

This Criminal Appeal is filed to call for the records relating to C.C.No.2001 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Ambattur and set aside the order of acquittal dated 19.03.2008 and consequently, allow the appeal.

2.The appellant has filed the appeal against the judgment of acquittal dated 19-03-2008 rendered by the learned District Munsif cum Judicial Magistrate, Ambattur in C.C.No.2001 of 2005

filed under Section 138 Negotiable Instruments Act against the respondents herein.

3.This case was taken up on special sitting, Saturday i.e. on 23-06-2018, prior to which advance list has been printed and circulated in the cause list for a period of two weeks. On the day of special sitting when the case was called up both petitioners and respondent had not appeared. It is a case of the year 2008 pending for more than 10 years, without any progress. This appeal is against the order of judgment of acquittal rendered by the learned District Munsif cum Judicial Magistrate, Ambattur in C.C.No.2001 of 2005 dated 19-03-2008. Hence, on perusal of the records, this court proposes to take up the appeal and dispose the same on merits.

4.The contention of the appellant is that the trial court failed to consider the ingredients of the offence under Section 138 of Negotiable Instruments Act. Despite, a case being made out against the respondent, the trial Court had acquitted them. Further, the trial Court failed to consider Ex.P2, the deed of collateral security executed by the respondents wherein the respondents had admitted their liability of Rs.12,50,000/- (Rupees Twelve lakh fifty thousand only) and about the issuance of the cheque. Hence, the amount due under dishonor of cheque dated 21-04-2005, is a legally enforceable debt. On the side of the respondents, there is no denial of Ex.P2. The trial court had given undue credence to Ex.P3.

5.Further, the trial Court failed to take note of the fact that few of the cheques consequent to Ex.P2 and Ex.P3 were honored by the respondents. Therefore, the burden shifted to the respondents to disprove the same, which the trial Court failed to take note of. In such circumstances, the trial Court ought to have convicted the respondents.

6.On perusal of the lower Court judgment and the typed set of papers filed along with the Criminal Appeal, it is seen that the lower Court has given a well reasoned cogent and a convincing judgment of acquittal. The appellant has admitted that the 2nd respondent has not signed the cheque and no averment as regards the 2nd respondent has been made. Further, the appellant had admitted that he has received the blank cheque and filled up the same, on dishonor of the same, the above case has been filed. It has been admitted by the appellant that there is no Memorandum of Understanding with regard to Ex.P4, the cheque in dispute. It is admitted by the appellant that the respondent while borrowing money for their business executed a deed of collateral security and had handed over 24 cheques for monthly EMIs and they have been making the payment. Without filing any statement of account how the amount of Rs.9,51,498/- has been

arrived as the due and the liability has not been properly explained. In view of the same, it is the bounden duty of the appellant to prove that the cheque in issue was issued towards discharge of liability by the respondents.

7.Further, it is an admission of the appellant that he had not filed any document in respect of understanding entered between the appellant and the respondents with regard to the cheque in issue. The trial Court had categorically observed that the cheque, Ex.P4 in the above case is one of the 24 cheques issued in blank as admitted by the appellant while the respondents had availed the financial assistance from the appellant. The respondents had examined two witnesses and had marked Ex.D1 to Ex.D3, which reveal the payments made to the appellant. In the absence of the appellant producing any books of accounts to prove their liability and in view of the explanation given by the respondents and by examining the defence witnesses and marking defence exhibits, the case of the respondents is more probable and had given plausible explanation, which the trial Court had accepted.

8.Further, the 2nd respondent, who is not a signatory to the cheque or any other document and further, without any averments in the complaint and in the evidence had been implicated would fortify the view of the trial Court that the complainant failed to prove the liability of the respondents and the respondents had probabilised their case with plausible explanation accepting the same the trial court had rendered a judgment of acquittal.

9.This Court having taken into consideration the principles laid down in the case of an appeal against acquittal and on perusal of the materials and the trial Court Judgment, which is in appeal finds that there is no perversity or illegality in the finding of the trial Court.

10.Hence, the Criminal Appeal is dismissed. The Judgment of acquittal dated 19.03.2008 in C.C.No.2001 of 2005 passed by the learned District Munsif cum Judicial Magistrate, Ambattur is confirmed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif cum Judicial Magistrate,
Ambattur.

2.The Chief Judicial Magistrate,
Tiruvallur District. (For Information)

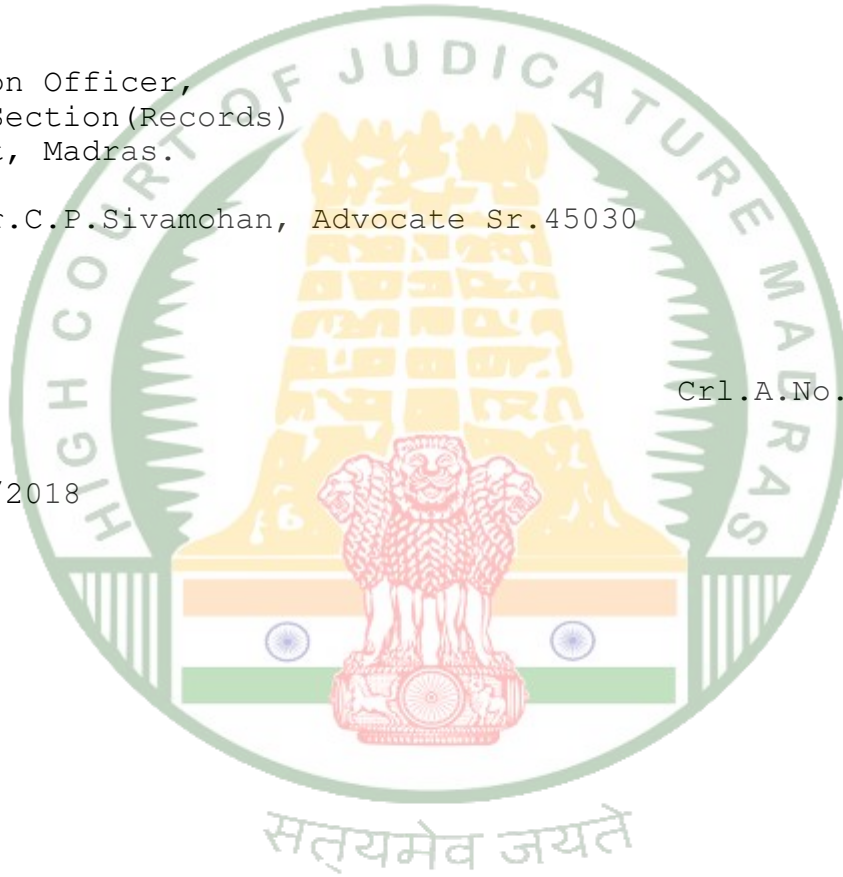
Copy to

The Section Officer,
Criminal Section(Records)
High Court, Madras.

+lcc to Mr.C.P.Sivamohan, Advocate Sr.45030

Cr1.A.No.304 of 2008

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